

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :
LANA MARSIANO : BK No. 05-12488
Debtor : Chapter 7
KEVIN DeANGELIS :
Plaintiff :
v. : A.P. No. 05-1055
LANA MARSIANO :
Defendant :

**ORDER GRANTING MOTION TO RECONSIDER AND
SETTING TRIAL DATE**

Heard on the Defendant Lana Marsiano's motion to reconsider an Order that entered on February 8, 2007, granting Plaintiff's Amended Complaint. In a nutshell, Marsiano argues that she did not appear at the trial on February 7, 2007, because she had the matter in her calendar for 2:00 p.m. that day rather than 10:00 a.m. when the trial was actually conducted. She did appear at the Court on February 7, 2007 at 12:30 p.m. and filed the instant motion to reconsider after learning the trial was held and concluded earlier in the day. On the merits of the Plaintiff's Amended Complaint, Marsiano alleges that the money in question was a gift and not a loan.

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Upon consideration of the motion and the testimony of Ms. Marciano, the Court finds that there are ample grounds for reconsideration and to hear this dispute on the merits, with both parties present to testify. In reaching this conclusion, I have listened to the hearing on November 14, 2006, when the trial date was selected. When the Court announced the trial date, it did not indicate what time the trial would commence. Additionally, the hearing on November 14 was held at 2:00 p.m. and Ms. Marciano testified that she assumed the trial would be at the same time. On February 7, 2007, the date of the trial, Ms. Marsiano actually appeared at Court at 12:30 p.m. to prepare for a 2:00 p.m. trial. Instead, she handwrote and filed the instant Motion to Reconsider when she learned the trial was held at 10:00 a.m.¹

Given the amount of time already expended to date in this case, the conflicting testimony of the parties, the preference for courts to decide disputes on the merits with both sides given the full opportunity to present their case, the Motion to Reconsider is GRANTED. A trial will be held on **January 24, 2008, at 10:00 a.m.** The parties should be prepared to conclude this matter on that day.

¹ The Motion to Reconsider was filed at 1:01 p.m.

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To the extent the parties believe it is necessary, an amended Joint Pre-Trial Order shall be filed no later than January 21, 2007.

Dated at Providence, Rhode Island, this 17th day of December, 2007.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 12/17/2007